

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN THAT LUONG,

Defendant.

No. CR 96-00094-1 JSW

**ORDER DENYING AS MOOT
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND
DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY AND
INSTRUCTIONS TO COUNSEL**

(Docket Nos. 2159, 2160)

On April 22, 2015, Defendant John That Luong, acting *pro se*, filed a motion to for leave to appeal *in forma pauperis*. (Docket No. 2159.) On April 15, 2015, Defendant's counsel on his motion to vacate filed a notice of appeal and paid the filing fee. Accordingly, the Court DENIES, AS MOOT, the application to proceed *in forma pauperis*.

In addition, Defendant has filed a motion for a certificate of appealability and a supplemental brief in support of that motion. (Docket Nos. 2160-2161.) In its Order denying Defendant's motion to vacate, it also denied a certificate of appealability, and this Court will not revisit that issue. Accordingly, it DENIES the motion a certificate of appealability for the reasons set forth in its prior Order.

Although Defendant may not appeal the denial of a certificate of appealability, he may seek a certificate from the Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure. *See* Rule 11(a) of the Rules Governing Section 2254 Proceedings.

1 Finally, it is HEREBY ORDERED that counsel for Defendant, Ethan A. Balogh, Esq.,
2 shall serve a copy of this Order on the Defendant and file proof of service with the Court.

3 **IT IS SO ORDERED.**

4 Dated: April 24, 2015


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE